

**REMARKS/ARGUMENTS**

**Election**

The Examiner has requested an election of a single invention for prosecution on the merits. The Examiner has identified the following inventions:

- Group I: Claims 1-14, 17 and 27-46, drawn to an excitation device, classified in class 607, subclass 61;
- Group II: Claim 15, drawn to a stent, classified in class 623, subclass 1.1;
- Group III: Claims 16-26 and 47-55, drawn to an implantable electrode stimulation system, classified in class 607, subclass 116; and
- Group IV: Claim 56, drawn to a tissue growth system, classified in class 607, subclass 50.

The Examiner's position is that the inventions are related as combination and subcombination.

The Examiner further required election of one of the following species if the claims of Group I are elected:

Species A: the device of figure 1; and

Species B: the device of figure 5.

If the claims of groups II or III are elected, the Examiner required election of one of the following species:

Species C: the device of figure 2;

Species D: the device of figure 3;

Species E: the device of figure 4;

Species F: the device of figure 6; and

Species G: the device of figure 7.

The Applicants hereby elect the invention of Group I, Species A, claims 1-13 and 28-45, with traverse. The Applicants traverse this restriction requirement as follows.

The Applicants traverse the restriction requirement because the Examiner has incorrectly classified the claims. Specifically, all claims may be properly classified under Class 607, subclass 2 for electrical therapeutic systems. The subject matter of this class

and subclass includes "Subject matter wherein an electrical signal is generated for application to electrodes or other applicators to stimulate body tissue for effecting a cure or alleviation of the effects of an abnormal condition or injury, or to restore normal or quasi-normal operation to a body part or the monitoring or controlling of such generation." Class 607 subclass 116, which is typically utilized for medical electrode leads, is clearly inapplicable to the claims of Group III because the present invention does not include the subject matter of this subclass, namely, "electrical energy ... applied to tissue inside the body by an applicator inserted through a natural or surgically created opening in the body." Likewise, subclass 50 of the class 607 is also inappropriate for the claims of Group IV, because the present invention may be used not only to provide "electrical stimulation for accelerating tissue growth" but also to suppress cell growth mechanisms as mentioned in paragraph 9 of the specification. Finally, assuming, arguendo, that the Examiner is correct in his classification of the claims, claim 27 appears to have been misclassified, which the Applicants believe to be more properly classified in the same group as claim 56.

The Examiner has indicated that no claims are generic. However, claims 1-8, 11-13, 27-38 and 41-45 are generic for both species A and species B of group I because the limitations of these claims are not dependent on any particular structure shown in the figures. Only claims 9 and 39, which recite the limitation that the induction device comprises at least one horseshoe shaped-electromagnet, and claims 10 and 4, which depend from claims 9 and 39, respectively, are specific for the species of Figure 1, which shows a horseshoe-shaped electromagnet. In a similar manner, claim 15 is generic for the claims of Group II, species C – G and claims 16-26 and 47-55 are generic for the claims in Group III, species C-G. The Applicants also reserve the right to request rejoinder of non-elected claims upon the allowance of any generic claim within an elected group under 37 CFR § 1.141(a).

The outstanding Office action was mailed on 15 June 2004. The Examiner set a shortened statutory period for reply of 1 month from the mailing date. Therefore, no petition for an extension of time or accompanying fee is believed to be due in making this

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response. However, in the event that a fee for the filing of his response is insufficient, the Commissioner is authorized to charge any fee deficiency or to credit any overpayment to Deposit Account 15-0450.

Respectfully submitted,



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